

REMARKS

With this Amendment, Applicants have amended Claims 4, 6, 8-9, 13-15, and 17-19, and have canceled Claim 5. Claims 10-12 have been withdrawn. Applicants believe, as set forth below, that Claims 4, 6-9 and 13-19 are now in condition for allowance.

Rejection of Claims 4-6, 9, 13, 16, and 18-19 under 35 U.S.C. §102(b)

The Examiner has rejected Claims 4-6, 9, 13, 16, and 18-19 under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,408,818 to Damron. However, as explained below, this rejection is based on an improper characterization of the Damron patent. Moreover, Claims 4, 6, 9, 13, and 18-19 have been amended herein to recite additional structure that is not anticipated by the Damron reference.

The Examiner characterizes Damron as disclosing a rake body (referenced as 24) configured to contain magnets. However, the rake as taught in Damron does not have a rake body. Instead, the rake described by Damron has tines 18 that are directly attached to a rake handle 36 (See Col. 3, lines 50-52) and a stainless steel housing 24 (Col. 3, lines 36-37) for holding magnets that is bolted onto the tines 18 of the rake.

Furthermore, Damron teaches that "the magnet can be removed from a dysfunctional rake and installed on a new one." (See Col. 2, lines 52-55 of the Summary.) Thus, Damron is directed to a magnetic bar that is meant to be attached or detached from any leaf rake. Accordingly, all disclosed embodiments in Damron teach fastening the magnets to the rake (See Col. 3, lines, 28-31) using wing nuts or other removable fasteners without reference to a unitarily formed, toothed rake body that encloses magnets.

The present invention, in contrast to Damron, is directed to an apparatus that comprises a hollow, unitarily formed, toothed rake body 1 containing at least one magnet 3, wherein the hollow, unitarily formed, toothed rake body 1 possesses rigidity and strength for agitating a ground surface at a construction site and for supporting a substantial amount of weight in the form of nails or other ferro-magnetic debris. Applicants have currently amended independent Claims 4 and 13 to more clearly point out this feature.

The type of multi-tined leaf rake described by Damron is frequently used to rake leaves and other lightweight debris from a relatively smooth surface. The long and pliable tines are intended to skim over a surface and would tend to become pushed back, and possibly even bent backwards, when encountering a substantial amount of nails or other heavy ferro-magnetic debris at a construction site.

Under the rough conditions of a construction site, the wing nuts 14 or other fasteners for attaching the magnet housing 24 to the rake tines 18 as taught in Damron are likely to loosen, possibly even detaching from the rake tines and becoming lost amidst the other debris. The advantageous unitary formation of the present invention is suitable for use under very rough conditions, and the enclosed housing is not susceptible to detaching or becoming lost while in use.

Referring to Claims 4-6 and 9

As described above, Damron does not teach "a hollow, unitarily formed, toothed rake body configured to contain ... magnets." Thus Damron does not teach every element of Claim 4, as currently amended, and, accordingly, Damron does not anticipate Claim 4.

Claims 6 and 9 depend directly from Claim 4 and disclose additional distinguishing features of the present invention. Since Claim 4 is patentable over Damron, Claims 6 and 9 are also patentable over Damron.

Referring to Claims 13-14

Similarly, Claim 13, as currently amended, describes a method of collecting ferro-magnetic items from a surface area, wherein the method comprises inter alia "operating over said surface area a hollow, unitarily formed, toothed rake body that contains at least one magnet inside."

As described above, Damron does not teach operating a hollow, unitarily formed, toothed rake body that contains at least one magnet inside. Thus, Damron does not teach every element of Claim 13, and, accordingly, does not anticipate Claim 13.

Since Claim 14 depends directly from Claim 13 and recites further distinguishing features of the method, Damron does not teach every element of Claim 14, and, accordingly, does not anticipate Claim 14.

Referring to Claims 16 and 18-19

Claim 16, as previously presented, discloses a system that comprises "means for agitating a ground surface" and "means, enclosed within said means for agitating, for attracting ferro-magnetic items ..." As described above, Damron does not disclose means for attracting ferro-magnetic items *enclosed within means for agitating*.

Also, as described above, the present invention's hollow, unitarily formed, toothed rake body that encloses one or more magnets provides a sturdier tool for collecting nails and similar ferro-magnetic debris and is more suited to the rough conditions of a construction worksite than is the leaf rake adaptation taught by Damron on which the magnet bar housing is attached by wing nuts.

Since Damron does not teach "means, enclosed within said means for agitating, for attracting ferro-magnetic items ...," Damron does not teach each and every element of Claim 16, and, accordingly, Damron does not anticipate Claim 16. Similarly, since Claims 18 and 19 depend directly from Claim 16 and recite additional distinguishing features of the system, Damron also does not anticipate Claims 18 or 19.

Rejection of Claims 5, 7-8, 15 and 17 under 35 U.S.C. §103(a)

The Examiner has rejected Claims 5, 7-8, 15 and 17 as being unpatentable under 35 U.S.C. §103(a).

Referring to Claim 15

The Examiner has rejected Claim 15 as being unpatentable over U.S. Patent No. 5,408,818 to Damron. As described above, Damron does not teach operating a hollow, unitarily formed, toothed rake body that contains at least one magnet inside. Thus, Damron does not teach every element of Claim 13, and, accordingly, does not anticipate Claim 13, from which Claim 15 directly depends. Adding a limitation of

inverting the toothed rake body enclosing the magnets does not make the claim obvious, and, thus, Damron does not teach the invention as disclosed in Claim 15.

Referring to Claims 7-8 and 17

The Examiner has rejected Claims 7-8 and 17 under 35 U.S.C. §103(a) as being unpatentable over Damron in view of U.S. Patent No. 1,927,873 to Lantz.

Lantz discloses a rake with a "continuously" formed rake body. However, while combining Damron with Lantz might obviously lead to a rake in which a magnet housing is bolted on to a rake body and might provide advantages over either Damron or Lantz as taught alone, the combination still does not obviously teach a hollow, toothed rake body that is unitarily formed to *enclose* a magnet housing within. The combination of Damron and Lantz would still be susceptible to the disadvantages of a magnet housing that is bolted on to a rake as described above. Yet, any other interpretation of the combination must rely on impermissible hindsight.

Thus, Claims 7-8 and 17 are not obvious over Damron in view of Lantz, and Applicants request that the Examiner withdraw the rejections of these claims.

Appl. No. : 10/699,485
Filed : 10/30/2003

CONCLUSION

In view of the foregoing amendments and remarks, Applicants submit that the application, as amended herein, is in condition for allowance and respectfully request the same. If, however, some issue remains that the Examiner feels can be addressed by Examiner's amendment, the Examiner is cordially invited to call the undersigned for authorization.

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: Dec 14, 2005

By: Nira Brand
Nira Brand
Registration No. 52,648
Agent of Record
Customer No. 20,995
(949) 760-0404

2132381
112905